

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DALE GALLAHER, ROBERT WILSON,  
RUSSELL POWELL, ANDRU KELLER,  
ERIC HEID, JOHN HEADLEY,  
and BRADLEY EBERT,

Plaintiffs,

v.

Civil Action No. 5:09CV69  
(STAMP)

KBR, INC.,  
KELLOGG, BROWN & ROOT SERVICES, INC.,  
KBR TECHNICAL SERVICES, INC.,  
OVERSEAS ADMINISTRATION SERVICES, LTD. and  
SERVICE EMPLOYEES INTERNATIONAL, INC.,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**GRANTING PLAINTIFF'S MOTION FOR**  
**LEAVE TO FILE AN AMENDED COMPLAINT**

I. Background

The plaintiffs, Dale Gallaher, Robert Wilson, Russell Powell, Andru Keller, Erick Heid, John Headley, and Bradley Ebert, filed a complaint against the defendants. The plaintiffs, soldiers who served in Iraq, allege that acts and omissions by defendants resulted in months of unprotected, unknowing, direct exposure to a potent carcinogen and mutagenic substance. The plaintiffs seek to amend their complaint to add the claims of additional soldiers who have come forward and wish to join in the plaintiffs' action. The soldiers who wish to join in the action are Dwayne McElroy, Roland Mayle, Benjamin Beckett, Roger Greathouse, Christopher Cogar, and Andrew Tosh. The defendants filed a response, stating that they have no objection to the plaintiffs' motion. For the reasons set

forth below, the plaintiffs' motion for leave to amend their complaint is granted.

## II. Applicable Law

Federal Rule of Civil Procedure 15(a)(1)(A) states, in pertinent part, that "[a] party may amend its pleading once as a matter of course . . . before being served with a responsive pleading." If a party seeks to amend its pleadings in all other cases, it may only do so "with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

Rule 15(a) grants the district court broad discretion concerning motions to amend pleadings, and leave should be granted absent some reason "such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment or futility of the amendment." Foman v. Davis, 371 U.S. 178, 182 (1962); see also Ward Elec. Serv. v. First Commercial Bank, 819 F.2d 496, 497 (4th Cir. 1987); Gladhill v. Gen. Motors Corp., 743 F.2d 1049, 1052 (4th Cir. 1984).

## III. Discussion

The plaintiffs seek to amend their complaint to add the claims of soldiers who have come forward to join in the plaintiffs' civil action. This amendment does not constitute an unfair surprise or

prejudice. In response, the defendants do not object to the plaintiffs' request to file an amended complaint.

After a review of the record, this Court concludes that the plaintiffs have not exhibited any undue delay, bad faith, or dilatory motive. Moreover, the prejudice to the defendants is not significant as to prevent this Court from allowing the amendment, and this Court cannot conclude that the plaintiffs' amendment would be futile. Accordingly, this Court grants the plaintiffs' motion for leave to file an amended complaint to add the claims of Dwayne McElroy, Roland Mayle, Benjamin Beckett, Roger Greathouse, Christopher Cogar, and Andrew Tosh.

#### IV. Conclusion

For the reasons set forth above, the plaintiffs' motion for leave to file an amended complaint to add the claims of Dwayne McElroy, Roland Mayle, Benjamin Beckett, Roger Greathouse, Christopher Cogar, and Andrew Tosh is hereby GRANTED. The Clerk is DIRECTED to file the amended complaint, which was attached to the plaintiffs' motion for leave to file an amended complaint, Docket No. 39. The defendants may file any response to the amended complaint pursuant to the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: February 8, 2010

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE